

Remarks

This Amendment is respectfully submitted in reply to the Examiner's Official Action dated March 23, 2006. In a prior Official Action, the Examiner noted that claims 1-7, 9, and 16-18 are pending in the application, while claims 8, 10-15, 19 and 20 were withdrawn from consideration as a result of the election of the species disclosed in Figures 1, 2, and 23 (Species 1) made by the Applicant in its paper dated September 14, 2005, which was submitted in response to the Restriction Requirement dated August 16, 2005.

Thereafter the Examiner issued a First Official Action on the Merits dated October 6, 2005. In such Official Action (OA), the Examiner rejected the claims accepted for examination based on U.S. Patent 3,567,242 to Miller. In the Examiner's view, the triangular Miller structure is essentially the same as Applicant's vehicle's structure. Applicant's amusement vehicle is particularly designed for effecting "wheelies" in which pulling back on the handle, or at least grasping the handle to retain control of the short wheelbase amusement vehicle, causes the front wheels to leave the ground and the device rolls along the ground balanced on the rear wheel. The Examiner asserts the Miller structure is triangular in shape, has three wheels, of which two are in the front and includes a handle. Actually there are two handles in Miller, one for each front wheel, both of which are pivotable to provide the Miller device the ability to pivot laterally in various manners, pivoting about various of the wheels. In other

words, by turning the two handles of Miller one at a time consecutively or both at the same time the vehicle platform will be drawn into various complicated maneuvers, which the third wheel being completely rotatable, or castored is enabled, to follow. While Miller states that his short handles could be lengthened to allow the rider apparently to stand up, it would then be difficult for the rider to keep his or her balance and the preferred embodiment is clearly with short handles facilitating riding in a sitting, crouching or kneeling position wherein sharp turns are not so likely to cause the rider to lose his or her balance.

The principal difference between Applicant's "wheelie" device and the Miller device is the provision of two steering handles in the front and a freely pivoting caster in the back, plus the fact the steering handles are very short. The platform of the Miller reference, which is "at least two feet on a side," is designed to be ridden on in either a kneeling or sitting position. There is no indication that anyone could do "wheelies" on the Miller device. However, the Examiner has pointed out wording indicating that many tricks can be accomplished on the Miller device and that the steering handles could be lengthened and argues that it would be obvious to make any necessary changes.

While there are similarities between the structures of the Miller and Applicant's reference, there are still clear functional differences between the parts of the two apparatuses and Applicant in his first response attempted to distinguish between the

two devices based upon such functional differences as seemingly sanctioned by the patent statutes. However, the Examiner raised various objections to the use of functional language including lack of clarity and asserted Applicant's proposed claim described neither a method nor a machine, *i.e.* neither fish nor fowl, but something in between and one skilled in the art "would not know how to use the invention."

The Examiner also conducted a further search and has cited additional references against Applicant's claims. The Examiner, however, again has basically rejected the claims on the Miller reference stating that "as best understood" by the Examiner, Miller teaches an amusement vehicle similar to Applicant's, with a single wheel positioned to the rear and two wheels positioned in front paired side to side and with a handle extending from the top. The Examiner specifically refers to the fact that Miller states that by lengthening his two steering handles, users of his platform could even stand on the board and again refers to Miller's statement that a user of his board is capable of learning to perform many unusual and complex feats (noticeably, however, not mentioning "wheelies") and can turn, pivot and stop quickly with precision.

The Examiner states that one could easily perform a wheelie with the Miller structure. All one would have had to do apparently according to the Examiner to perform a wheelie with the Miller apparatus would be to pull on the one or both of the steering handles and therefore in the Examiner's opinion, Miller thus clearly anticipates

use of the Applicant's amusement device to perform "many and unusual feats" as stated by Miller. The Examiner goes on to state that Miller, in column 3, lines 30-31 states "With practice, the operator can turn, pivot, stop quickly and with precision". The maneuver described by Miller, states the Examiner, is the same as Applicant's "wheelie maneuver". Analyzing Miller's concept and language, however, it seems eminently clear that the "pivoting" Miller speaks of is pivoting laterally about a wheel and not pivoting upward upon a wheel. There is no mention of pivoting up on the back wheel and the entire thrust of the disclosure is that the "pivots" or controlled turns, are executed by operating the two handles and will clearly be effected by turning the two handles and not by pulling up or back upon them. There simply is no disclosure of doing "wheelies" on the Miller amusement vehicle and no suggestion of doing wheelies. There is no suggestion of lengthening the handles in order to do wheelies and while it is stated that the handles could be lengthened, this is clearly merely an effort of the Miller attorney to broaden the disclosure and contains no indication the Miller device would be suitable for doing "wheelies" which were not even popular at the time of the Miller apparatus. Miller also has two separate steering handles and not a single effective handle as in Applicant's amusement vehicle. To have only one steering handle would completely incapacitate the Miller apparatus from doing the tricks it was designed to do. It is submitted, therefore, that the Miler apparatus does not either disclose or suggest Applicant's amusement vehicle.

The Examiner in addition now has also rejected claims **1**, **2**, **4** and **5** as being anticipated by a newly cited patent 1,056,367 to Murdock, "The Murdock patent". The Examiner states that Murdock "as best understood" teaches an amusement device similar to Applicant's including a support base, a handlebar assembly and at least two ground contacting wheels, one including "a primary turning means" and the other "a stabilizing means" (a paraphrasing of language from applicant's claim **1**, now cancelled). The Murdock apparatus appears to be an early skateboard-type or scooter device. The fact that the Examiner states that both the Miller structure and the Murdock structure are, as she understands, similar to the Applicant's device in itself raises serious questions, since the two references are so different, but Applicant realizes that the Examiner means not that the references per se are necessarily similar to Applicant's, but that the claims in the application broadly describe something that could in certain embodiments be like that shown by either reference. Applicant has now, therefore, drafted a claim which clearly avoids both references, i.e. claim **23**.

The Examiner has also now rejected Applicant's claims **16** and **21** as anticipated by Patent 1,467,453 to Remacle, which shows a triangular base with caster wheels on the back and a steering caster on the front. Apparently, the rider throws his or her body or more particularly hips and buttocks from side to side while riding on the device and the sideways movement engendered is transformed then into a combination of sideways and forward movement:

The Murdock patent 1,056,357, issued March 18, 1913, discloses essentially a progenitor of the modern skateboards, but having the two wheels of a small so-called "scooter" rather than the typical skate wheels of a skateboard. While the base is apparently fairly short, it is not too short since the riders feet are shown on the platform one behind the other. Note that the handle is outside the wheelbase and there is no overhanging in the back. There are in addition only two ground contacting wheels as is usual in scooter type devices.

The Remacle patent 1,467,453 issued September 11, 1923 shows a triangular platform with a single handle in front and two caster type wheels in the rear. This is just the opposite of Applicant's claimed amusement device and would possibly not be difficult to do wheelies with, but would also not provide the challenge of the Applicant's arrangement, which both challenges and demonstrate one's skill, such challenge and demonstration being a principal component of wishing to do wheelies.

The Miller patent 3,567,242 has been summarized in its important aspects above, and an even more complete description will be found in Applicant's previous response dated January 6, 2006.

Applicant has drafted a new claim **23** directed particularly to a short wheelbase amusement vehicle designed for the purpose of performing wheelie maneuvers having at least three ground contacting wheels, two of such wheels constituting front wheels and one constituting a rear wheel, the platform being sufficiently wide to accommodate the riders' feet side by side, with a single handlebar assembly being centrally positioned within the confines of the wheelbase and substantially equidistant from the sides of the platform and being of sufficient height to be easily grasped by a rider in erect position with the rear of the platform extending sufficiently in the rear beyond the wheels to protect the riders' feet when performing wheelie maneuvers.

Claim **23** is believed to clearly distinguish from all the relied upon references as well as the other references made of record.

In brief the Murdock reference shows a platform accommodating the riders' feet one behind the other, rather than side by side, the handle is outside the wheelbase and there are only two wheels.

The Remacle reference has two wheels in the back and one in front instead of Applicant's opposite alignment and the triangular Remacle platform is also reversed with respect to the configuration of Applicant's platform.

The Miller reference, on the other hand, has two rather than a single steering handle and the Miller handles not only are usually kept short to maintain stability when performing quick complicated turns, when it is desirable to have the rider low on the board, but it is necessary to have two handles to do the complicated turning tricks or maneuvers the Miller device was designed to do. Consequently, the handles are made short to accommodate a kneeling, squatting or sitting operator and there are definitely two of them. While the Miller patent mentions the possibility of raising or lengthening the handles, it seems pretty clear that this is more a matter of a patent practitioner attempting a broadening of the description rather than a practical or likely modification. It is simply not a description of anything likely to be provided in the Miller apparatus and would be so interpreted by anyone referring to Miller. In addition, the Miller reference definitely has two steering handles,, as this is a prime requisite to do the quick turns, pivots and stops which Miller indicates he is able to do. Indeed a pivot is at heart a quick turn or a very sharp turn and it is quite clear this is what is meant by the term pivot from the context. There is no disclosure of an upward pivot in the sense of performing a wheelie. The Miller structure is thus not only unsuited to perform wheelie maneuvers, but does not, particularly if read in context, suggest in any way that it could be used as a vehicle for performing the type of upward pivoting involved in wheelie maneuvers. Additional discussion of Miller can be found in Applicant's previous response to the Examiner's First Official Action on the merits. In any event, Applicant's claim **23** clearly distinguishes over the Miller because it calls for only a single handlebar assembly

positioned centrally of the platform and within the wheelbase therefor where the handle as explained in Applicant's specification is most effective to retain control of the recreational wheelie when the rider finally steps off or particularly loses his or her balance and steps off to avoid falling. A centrally positioned handlebar assembly is at such time most efficient in keeping control of the apparatus. The lack of such a handle is one serious deficiency of the usual skateboard type of wheelie device, which usually continues on after sudden dismounting of the rider. Since the Applicant's device is a short wheelbase device, furthermore, in which the feet of the rider are frequently placed side by side, the centralized handle provides a convenient arrangement for pulling back on to initially assume a wheelie attitude and aids in maintaining balance while in such attitude.

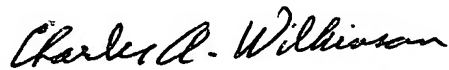
As should be recognized from the above discussion, Applicant's main independent claim **23** now defines clearly from the prior art relied upon by the Examiner. Applicant has reviewed the other prior art of record in this case and believes claim **23** clearly distinguishes from each such item of prior art as well as any reasonable combination of such prior art.

It is believed in view of the above that the application is now in condition for allowance and an action to this effect is requested.

Amendment
Appl. No.: 10/693,675
Examiner: Bridget D. Avery
Group Art Unit 3618

Applicant is submitting with this response a Request for Continued Examination together with the RCE fee of \$395 plus a fee of \$490 at the small entity fee for a three-month extension. If any other fees or charges are due, please charge to Deposit Account No. 15-0385.

Respectfully submitted,



Charles A. Wilkinson
Attorney for the Applicant
Registration No. 20,891

Date: September 22, 2006

Law Offices of Charles A. Wilkinson
68 East Broad Street
P.O. Box 1426
Bethlehem, PA 18016-1426

Telephone: (610) 867-9700
Facsimile: (610) 868-8869